

# Fiscal Note

*Fiscal Services Division*



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**HF 526** – Criminal Possession Definition Changes (LSB 2672HV)

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Fiscal Note Version – New

Requested by Representative Ako Abdul-Samad

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## **Description**

**House File 526** amends the definition of possession (or possess) in Iowa's Criminal Code.

## **Background**

### **Correctional and Fiscal Information**

- There are more than 54 criminal laws that reference the term possession (or possess) and may affect criminal convictions under the Bill's provisions, excluding possession with intent to deliver and possession with intent to manufacture controlled substances. Offenses range from simple misdemeanors to Class C felonies and include felony enhancements to original penalties.
- The Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights released a report entitled, "Iowa's Prison Population Forecast FY 2010 – FY 2020." The Report indicates if current offender behaviors and justice system trends, policies, and practices remain unchanged, the prison population will be approximately 10,409 inmates by June 30, 2020, an increase of 21.0% over the next ten years.
- By FY 2020, without any additional prison beds, the prison population is expected to reach 135.8% of design capacity. This figure is based on the assumption that the additional beds authorized during the 2008 Legislative Session for Fort Madison and Mitchellville will be operating by FY 2020. If the population reaches 10,409 inmates, two additional 800-bed prisons will be required, in addition to the expansions authorized at Fort Madison and Mitchellville.
- If two additional prisons are built over the next decade, projected design capacity will be 9,266 beds with a projected population of 10,409 offenders and the prison system will be operating at 112.3% of capacity. The cost of one 800-bed prison with a mix of medium and minimum custody levels is approximately \$85.0 million for construction; construction of two such prisons would be approximately \$170.0 million. Operating costs are estimated to be at least \$30.0 million annually per prison.
- Iowa's prison population was at 123.7% of capacity on March 7, 2011, with 8,917 offenders confined in space designed for 7,209.

### **Minority Data Information**

- The U.S. Census estimate for Iowa was 3.0 million people as of July 1, 2009 (the most current estimate available). Men comprise 49.3% of the population. Approximately 92.7% of Iowa's population is white. The composition of the remaining 7.3% is: 2.5% black, 0.3% American Indian or Alaska Native; 1.7% Asian; and 2.9% is of two or more races or unknown.
- Iowa's prison population was 8,603 offenders on June 30, 2010. Men comprised 91.8% of the population. According to the CJJPD, the racial composition of the prison system was: 71.7% white; 25.5% black; 1.0% Asian or Pacific Islander; and 1.8% American Indian or

Alaska Native. Included in these racial groups were 6.8% that identified themselves as Hispanic (nearly all of these identified themselves racially as being white).

- According to the CJJPD, on June 30, 2010, approximately 8.2% of the offenders in prison were women and 26.1% of offenders under supervision in Community-Based Corrections (CBC) were women. Approximately 21.5% of the total offender population under correctional supervision was women.
- In FY 2010 where race was known for drug possession convictions, 75.3% were Caucasian, 19.0% were African American, and 5.7% were other races or ethnicities.

## **Assumptions**

### **Correctional and Fiscal Information**

- Code Section 702.1 states Iowa's policy of uniformity, "Wherever a term, word or phrase is defined in the criminal code, such meaning shall be given wherever it appears in the Code, unless it is being specially defined for a special purpose."
- Defining "possession," "actual possession," and "constructive possession" may impact the juvenile and civil justice system.
- It is not known if the Bill's provisions relate to such acts as underage possession of alcohol or tobacco products.
- It is not known if the Bill's provisions relate to violations under the purview of the Department of Natural Resources (DNR), such as possession of fish over the legal limit, or game out of season.
- It is not known if the Bill's provisions relate to violations under the purview of the Department of Agriculture and Land Stewardship, such as possession and control of adulterated and improperly labeled articles.
- It is not known if the Bill's provisions impact other civil actions, such as those related to real estate foreclosure or landlord/tenant laws.

### **Minority Data Information**

Approximately 14.8% of Iowa's population has at least one disability. The number of disabled offenders convicted under this Bill may be 14.8%.

## **Summary of Impacts**

### **Correctional Impact**

To the extent the Bill's provisions eliminate ambiguity and codify current practice and case law, there will be increased efficiencies for law enforcement and trial courts.

To the extent the Bill's provisions result in additional criminal convictions, there will be an impact on county jail operations, and the State corrections system, including the prison system, probation, parole, and residential facilities. This will further exacerbate an already crowded system.

To the extent the Bill's provisions result in appeals to establish new case law, there will be increased costs within the criminal justice system, including workload for county attorneys, the court system, and State prosecution and defense.

### **Minority Impact**

To the extent this Bill results in additional criminal convictions, there will be a disproportionate impact on minorities because approximately 24.7% of offenders convicted under the Bill's provisions may be minorities. Additional criminal convictions will result in an increased number of minority offenders supervised in the corrections system.

## **Fiscal Impact**

The fiscal impact cannot be determined because the number of court actions and convictions that will occur as a result of the changes in this Bill cannot be predicted. The cost to the State General Fund may be significant if the Bill results in additional convictions under the Criminal Code. Examples of the range of average State costs for the penalties available under the Bill include:

- \$27 (court costs) to \$327 (court costs and indigent defense) for one simple misdemeanor conviction.
- \$201 (court costs) to \$5,300 (court costs including a jury, indigent defense, prison, and parole) for one serious misdemeanor conviction. The maximum costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.
- \$2,100 (court costs and probation) to \$6,700 (court costs with a jury, prison, parole, and indigent defense) for one aggravated misdemeanor. Costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.
- \$4,750 (court costs, indigent defense, and probation) to \$12,300 (court costs with a jury, indigent defense, prison, and parole) for one Class D felony conviction. Costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.
- \$5,700 (court costs, probation and indigent defense) to \$18,800 (court costs with a jury, prison, parole, and indigent defense for one Class C felony conviction). Costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.

To the extent sentences to county jails increase under this Bill, there will be an impact on county budgets. However, that impact cannot be estimated due to a lack of data.

To the extent, if any, the Bill's provisions relate to Iowa's civil and juvenile justice systems, there will be a fiscal impact. That impact cannot be determined due to a lack of data.

## **Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Office of the State Public Defender  
Judicial Branch

/s/ Holly M. Lyons

March 14, 2011

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The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the correctional and minority impact statements were prepared pursuant to Code [Section 2.56](#). Data used in developing this fiscal note, including correctional and minority impact information, is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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